

DATED AS OF FEBRUARY 15, 1970

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

AND

GREENVILLE STEEL CAR COMPANY

(PULLMAN-STANDARD DIVISION)

PULLMAN INCORPORATED

AMONG

### Agreement and Assignment

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DATED AS OF FEBRUARY 15, 1970

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

AND

GREENVILLE STEEL CAR COMPANY

(PULLMAN-STANDARD DIVISION)

PULLMAN INCORPORATED

AMONG

### Conditional Sale Agreement

COUNTERPART NO. 3 OF 14

INTERSTATE COMMERCE COMMISSION

MAY 8 - 1970 - 12:45 PM

RECORDATION NO. 5709 Filed & Recorded

## CONDITIONAL SALE AGREEMENT

**THIS AGREEMENT**, dated as of February 15, 1970, by and among Pullman Incorporated (Pullman-Standard division), a corporation of the State of Delaware (hereinafter sometimes called "Pullman") and Greenville Steel Car Company, a corporation of the Commonwealth of Pennsylvania (hereinafter sometimes called "Greenville") (Pullman and Greenville being hereinafter each sometimes called the Vendor or Manufacturer, as more particularly set forth in Section 21 hereof) and Louisville and Nashville Railroad Company, a corporation of the Commonwealth of Kentucky (hereinafter sometimes called the "Vendee"),

### WITNESSETH, THAT:

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. **CONSTRUCTION AND SALE.** Each Manufacturer hereby agrees to construct, sell and deliver to the Vendee, and the Vendee hereby agrees to buy from the Manufacturer and to accept delivery and pay for, as hereinbelow provided, the freight train cars described herein below, (such cars hereinafter sometimes referred to as "cars").

(i) Cars to be constructed by Pullman: Six Hundred Thirty (630) new open top hopper cars, of 80-ton nominal capacity with a volume of 2960 cubic feet, equipped with roller bearings, to bear Vendee's Road Numbers 184700 through 185329, and to be constructed in accordance with Pullman Specification 9272, as revised and modified from time to time by agreement between Pullman and Vendee (such specification, and modifications, if any, hereinafter referred to as "Specifications").

(ii) Cars to be constructed by Greenville: Ten (10) new high cube box cars, 86' 6" inside length, of 100-ton nominal capacity, equipped with roller bearings, to bear Vendee's Road Numbers 104665 through 104674, and to be constructed in accordance with Greenville Specification BR-4427-2, as revised and

modified from time to time by agreement between Greenville and Vendee (such specification, and modifications, if any, hereinafter referred to as "Specifications").

Each car will be new standard gauge rolling stock constructed in accordance with the applicable Specifications. Vendee represents and warrants that the Specifications including the design, quality and component parts of the cars will conform to all Department of Transportation, Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the cars as of the date of this Agreement.

(A) DELIVERY. Each Manufacturer agrees to deliver the cars to be constructed by it, free of all liens, encumbrances and claims of any nature by or in favor of any person or party and subject only to the reservation of title thereto by such Manufacturer in accordance with the provisions of this Agreement, as follows:

As to Pullman, the cars shall be delivered to Vendee on its tracks at Bessemer, Alabama, or at such other point or points as Vendee may hereafter specify in writing, in either case freight charges to be paid by Vendee; delivery of the cars to begin approximately March 13, 1970, and to be completed on or about April 22, 1970.

As to Greenville, the cars shall be delivered to Vendee on its tracks at Covington, Kentucky, or at such other point or points as Vendee may hereafter specify in writing, in either case freight charges to be paid by Vendee; delivery of the cars will be made on or about March 16, 1970.

Construction and delivery of the cars, however, shall be subject to rescheduling of shop space and delays due to strikes, differences with workmen, labor troubles, acts of God, Governmental acts and regulations, war or war conditions, riots or civil commotion, sabotage, fires, floods, explosions or other accidents, or to delays of carriers or of sub-contractors or in the receipt of materials, or to reasonable delays occasioned by or arising in connection with the construction of cars or products for Manufacturer's other customers which are contracted to be constructed at Manufacturer's plant prior to the construction of the cars covered by this Agreement, or to any other cause

or causes (whether or not of the same general character as those herein specifically enumerated) beyond the Manufacturer's reasonable control.

Notwithstanding the preceding provisions of this Section 1, and in accordance with Section 2 (B) hereof, any cars not delivered, accepted and settled for on or before September 30, 1970, shall be excluded from this Agreement and not included in the term "cars" as used in this Agreement.

Each Manufacturer shall give the Vendee full opportunity to inspect the cars during the construction thereof at its plant. Upon completion of each of the cars, Vendee shall arrange for final inspection thereof and shall have its inspector execute, in six copies, the usual form of certificate of inspection covering all cars found to be completed in accordance with the Specifications. Each such certificate with respect to the cars covered thereby shall be final and conclusive evidence that such cars conform in workmanship, material, construction and in all other respects to the requirements and provisions of this Agreement. Vendee shall arrange also for acceptance of the cars by a duly authorized agent upon arrival thereof at the place of delivery and such agent shall execute, in six copies, a certificate of acceptance of such cars stating that the car or cars covered by such certificate have been delivered to and accepted by him on behalf of the Vendee as conforming in all respects to the requirements and provisions of this Agreement. Neither such certificate of inspection nor such certificate of acceptance shall relieve the Manufacturer of its warranties covering material and workmanship contained in Section 7 hereof.

(B) PURCHASE PRICE.

The purchase price of each car shall be determined as hereinafter provided, namely:

As to Pullman, the estimated purchase price of each car is Twelve Thousand Three Hundred Forty Dollars (\$12,340.00), f.o.b. Pullman's plant at Bessemer, Alabama.

As to Greenville, the estimated purchase price of each car is Thirty Thousand Two Hundred Fifty Dollars (\$30,250.00), f.o.b. Greenville's plant at Greenville, Pennsylvania.

In each case, the estimated purchase price is subject to such increase or decrease as may be agreed to by the Manufacturer and Vendee. The term "Purchase Price" as used herein shall mean the estimated purchase price as so increased or decreased.

For the purpose of making settlement, the cars shall be gathered into groups delivered to and accepted by Vendee (each such group being hereinafter called a "Group"). The number of cars in each Group shall be not less than 225 cars, except for the last Group which may be for a number of cars less than 225, as the Vendee shall by written notice designate to the Manufacturer from time to time, provided, however, the cars shall be delivered in not more than three Groups.

2. PAYMENT OF PURCHASE PRICE. (A) The Vendee hereby promises to pay the Purchase Price of each car accepted as hereinabove provided, in the following manner:

That part of the Purchase Price, as stated in the invoice therefor, which is in excess of the Deferred Purchase Price, hereinafter specified, shall be paid in cash to the Manufacturer by the Vendee, upon receipt by Vendee of such invoice.

As to each car to be constructed by Pullman, Twelve Thousand Three Hundred Thirty Dollars (\$12,330.00) of the Purchase Price, being the Deferred Purchase Price, shall be paid in sixteen (16) equal consecutive semi-annual installments of \$411.00 each to be followed by seven (7) equal consecutive annual installments of \$822.00 each.

As to each car to be constructed by Greenville, Thirty Thousand Two Hundred Forty Dollars (\$30,240.00) of the Purchase Price, being the Deferred Purchase Price, shall be paid in sixteen (16) equal consecutive semi-annual installments of \$1,008 each to be followed by seven (7) equal consecutive annual installments of \$2,016 each.

In the event the Purchase Price of any car shall be less than the Deferred Purchase Price therefor (such difference herein called the "Excess"), the Deferred Purchase Price of such car shall be reduced by such Excess and thereupon the Purchase Price of such car shall be and become the Deferred Purchase Price thereof for every purpose of this Agreement and all installments with respect to such Deferred Purchase Price shall be ratably reduced.

The sixteen equal consecutive semi-annual installments of Deferred Purchase Price in respect of each car shall be due and payable on December 1 and June 1 each year, commencing December 1, 1970 and ending June 1, 1978. Said semi-annual installments of the Deferred Purchase Price shall be serially numbered 1 through 16, inclusive. The seven equal consecutive annual installments of Deferred Purchase Price in respect of each car shall be due and payable on June 1 in each year, commencing June 1, 1979 and ending June 1, 1985. Said annual installments of the Deferred Purchase Price shall be serially numbered 17 through 23, inclusive.

With each installment payment of principal in respect of each delivered and accepted car, there shall be due and payable (i) interest at the prime rate, as hereinafter defined, plus  $\frac{1}{4}$  of 1% per annum on the unpaid Deferred Purchase Price of each car represented by all semi-annual installments of the Deferred Purchase Price serially numbered 1 through 15, from the respective Closing Date, as hereinafter defined, of such car to the respective maturities of said semi-annual installments of principal; (ii) interest at the fixed rate of  $9\frac{5}{8}\%$  per annum on the unpaid Deferred Purchase Price of each car represented by the semi-annual installment of the Deferred Purchase Price numbered 16 and all annual installments of the Deferred Purchase Price serially numbered 17 through 23, from the respective Closing Date of such car to the respective maturities of said semi-annual installment and annual installments of principal.

The "prime rate" is defined as the lowest rate in effect by the majority of the seven (7) largest New York City banks to substantial and responsible borrowers for short-term loans. In the event that, from time to time, the prime rate shall have been changed by a majority of said New York City banks, then, for purposes herein, the prime rate shall be deemed to be the changed rate, to become effective on the effective date of such change announced by a majority of said banks.

All interest provided for in this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months. The first payment of interest with respect to each car shall become due and payable on December 1, 1970 and shall cover interest from the "Closing Date" (hereinafter defined) for such car. Subsequent payments

of interest shall be due and payable semi-annually on June 1 and December 1 of each year thereafter until said entire Deferred Purchase Price shall have been paid in full.

The term "Closing Date" with respect to each Group shall mean such date (on or prior to September 30, 1970), not more than 10 business days following presentation by the Manufacturer to the Vendee of the invoice and the certificate of acceptance for such Group, as shall be fixed by the Vendee by written notice delivered to such Manufacturer at least 3 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

If payment of any installment, or portion thereof, of the Deferred Purchase Price of any car, or of interest, determined as hereinabove provided, be made after its due date, interest thereon shall be paid (to the extent permitted by law) with respect to the semi-annual installments of the Deferred Purchase Price serially numbered 1 through 15, at the rate of eight percent (8%) per annum or at the prime rate plus  $\frac{1}{4}$  of 1% per annum, whichever is greater, from said due date until payment be made therefor, and with respect to the semi-annual installment of the Deferred Purchase Price numbered 16 and the annual installments of the Deferred Purchase Price serially numbered 17 through 23, at the rate of ten and one-eighth percent ( $10\frac{1}{8}\%$ ) per annum from said due date until payment be made therefor.

(B) It is mutually agreed that, in the event delivery and acceptance of any of the cars is delayed beyond September 30, 1970, any such car shall be excluded from the terms and provisions of this Agreement. Any such car or cars so excluded from the terms and provisions of this Agreement shall not be included in the term "cars" as used in this Agreement. In the event of any such exclusion, the Vendee and the Vendor shall execute an agreement supplemental hereto limiting this Agreement to the cars delivered and accepted hereunder.

(C) The Vendee shall not have the privilege of prepaying any installment of the Deferred Purchase Price with respect to any car prior to the date that it becomes due hereunder, except as provided by Section 6 hereof.

(D) All payments provided for in this Agreement shall be made by the Vendee in such coin or currency of the United States of America

as at the time of payment is legal tender for the payment of public and private debts.

(E) Whenever any payment to be made under this Agreement shall be stated to be due on a Saturday, Sunday or a holiday under the laws of the place of payment, such payment shall be made on the next succeeding business day.

3. TITLE TO THE CARS. Each Vendor shall, and hereby does retain the full legal title to, and property in, all of the cars constructed by it until the Vendee shall have made all of the payments, and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Vendee, with respect to any such car, notwithstanding the delivery of such car to, and the right to the use hereof by, the Vendee as herein provided.

The Vendee covenants and agrees that it will cause each car to be kept numbered with the assigned road number and to be kept plainly marked by "plating" or stencilling upon both sides of the car with the name of the Vendor, in letters not less than one inch in height, followed by the word "Owner" or "Owners" or other appropriate words designated by the Vendor, and the Vendee agrees that it will not place any car in operation or exercise any control or dominion over any car until it shall have been so marked. Vendee covenants and agrees that it will not change the number assigned to or placed upon any car except with the consent of the Vendor and in accordance with a statement of new numbers previously filed with the Vendor by the Vendee, and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited; *provided, however*, that, in addition to such identifying number, the Vendee may cause to be placed on each car in such position as not to be confused with the identifying number thereon a reporting number identifying each car for reporting and operating purposes, which reporting number may be changed by the Vendee from time to time without the consent of the Vendor or the filing, recording or depositing of any instrument.

Vendee agrees not to place or permit to be placed upon any car or any replacement thereof any marks, signs or words which might be interpreted as a claim of ownership of the car by any person, firm or corporation other than the Vendor; except, however, Vendee may cause each car to be lettered "Louisville and Nashville Railroad Com-



pany", or "L.&N.R.R.Co.", or in some other appropriate manner for convenience of identification of Vendee's right to use such car.

When and only when the Vendors have been paid the full Purchase Price for all of the cars, together with interest and any and all other payments as herein provided, and all of the Vendee's covenants and conditions herein contained have been performed by the Vendee, absolute right to possession of, title to and property in, all of the cars shall pass to and vest in the Vendee without further transfer or action on the part of the Vendors. Upon full payment as aforesaid, Vendors will, if requested by Vendee to do so, execute, acknowledge and deliver to Vendee an instrument whereby the Vendors will acknowledge satisfaction of all payments required to be made by Vendee by any provision of this Agreement, and will transfer and convey to Vendee all right, title and interest in or to the cars.

4. TAXES, etc. All payments by Vendee hereunder shall be free of expense to Vendors for collection or other charges, and no deductions shall be made therefrom of the amount of any federal, state or other taxes, assessments or governmental charges (other than federal income taxes or net income taxes imposed by or under authority of any state) levied or imposed directly upon this Agreement or upon any assignment of or participation in any assignment of this Agreement, or which may be levied or imposed upon the cars, or the acquisition thereof, or upon the sale, shipment, delivery or use thereof, all of which expenses and taxes the Vendee assumes and agrees to pay in addition to the above mentioned Purchase Price of said cars. Vendee hereby specifically agrees also to pay to Vendors in addition to the purchase price of the cars, all sales taxes, or like taxes or charges which may be assessed, levied or imposed upon or with respect to the acquisition, sale or delivery to or use by Vendee of the cars, or any of them, and which Vendors may be legally required to pay to any state or municipality or to the United States or other government.

Vendee shall also pay promptly all taxes, assessments and governmental charges which from time to time may be imposed upon the cars, or the earnings arising therefrom, or the operation thereof, or upon Vendors by reason of their ownership thereof, by any government of any country, state or political subdivision thereof in which the cars may be located or which shall have jurisdiction over the cars or

or encumbrancer and all others having any interest therein or to cause any such cars to be released from such pledge or encumbrance or to recover possession of such cars within thirty (30) days after Vendors shall have demanded in writing such cancellation or release or the recovery of possession of such cars; or

(c) shall fail or refuse, for more than thirty (30) days after Vendors shall have demanded in writing the performance thereof, to comply with any other of the terms and covenants of this Agreement to be kept and performed by Vendee or to make provision satisfactory to Vendors for such compliance; or

(d) shall file, or the creditors of the Vendee shall file any petition for reorganization or debt adjustment affecting the obligations of such Vendee hereunder under Section 77 of the Bankruptcy Act or under any amendment or revision thereof or under any other provision of the Bankruptcy Act as now or hereafter existing or under any other statute, or shall make any voluntary assignment or transfer of such Vendee's interest in and under this Agreement, or any involuntary transfer of such interest shall be made by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise (unless such petition shall be dismissed or such assignment, transfer, decree or process shall within thirty (30) days from the filing or other effective date thereof be nullified, stayed or otherwise rendered ineffective, or unless any such receiver or trustee shall within thirty (30) days from the date of his appointment adopt this Agreement pursuant to due authority of the court appointing him);

then, in any such case (in this Agreement sometimes called "event of default"), Vendors at their option may by notice in writing delivered to Vendee, and upon compliance with any mandatory requirement of law applicable to the action to be taken, declare to be due and payable forthwith the entire unpaid balance of the Purchase Price of the cars; and thereupon the entire amount of such unpaid Purchase Price shall become and shall be due and payable immediately without further demand together with interest thereon to such date of default at the

rates set out in Section 2(A) of this Agreement, and thereafter interest shall be payable by Vendee upon any portion thereof overdue, during such time as it shall remain overdue, at the rate of eight percent (8%) per annum or at the prime rate plus  $\frac{1}{4}$  of 1% per annum, whichever is greater, with respect to the semi-annual installments of the Deferred Purchase Price serially numbered 1 through 15, and at the rate of ten and one-eighth percent ( $10\frac{1}{8}\%$ ) with respect to the semi-annual installment of the Deferred Purchase Price numbered 16 and the annual installments of the Deferred Purchase Price serially numbered 17 through 23. Vendors shall thereupon be entitled to recover judgment for the entire amount so payable by Vendee with interest thereon at said rates and to collect such judgment out of any property of Vendee wherever situated. Any and all money so collected by Vendors shall be applied by them as hereinafter provided.

Vendee covenants that, in case of the happening of any such event of default, Vendors or their agents, after making the declaration previously provided for in this Section, and upon such further notice as may be required for compliance with any mandatory requirement of law applicable to the action to be taken, may also take possession of all or any of the cars wherever they may be found, and for that purpose enter upon the railroads and premises operated by Vendee, and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made hereunder for the cars and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind, earned by the cars or any thereof, and may lease the cars or any thereof, or, with or without retaking possession thereof (but only after making the declaration provided for in this Section), may sell the same or any thereof as far as may be necessary to realize the balance remaining to be paid by Vendee under this Agreement, free from any and all claims of Vendee at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, after at least fifteen (15) days' prior written notice to the Vendee, and with or without any other notice or advertisement, for cash or upon credit, in their discretion, and may otherwise proceed to enforce their rights in the manner provided by this Agreement.

In case Vendors shall rightfully demand possession of the cars in pursuance of this Agreement and shall reasonably designate a point or points upon the railroads or premises operated by Vendee, for de-

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF MERCER } ss:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, D. H. Lewis, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Greenville Steel Car Company, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 4th day of ~~May~~  
~~April~~, 1970.

*Leora Smith*  
Notary Public

Mercer County, Pennsylvania

My Commission expires

(NOTARIAL SEAL)

LEORA SMITH, Notary Public

GREENVILLE, PENNSYLVANIA

My Commission Expires Feb. 21, 1973

STATE OF MARYLAND, }  
 CITY OF BALTIMORE, } SS:

The undersigned, a Notary Public for the State and City afore-  
 said, certifies that, on the date hereinafter stated, personally appeared  
 before me in said State and City, C. M. Webb,  
 to me personally known, who thereupon produced before me the fore-  
 going instrument, and who, being by me duly sworn, says that he is  
**ASSISTANT** Vice-President of Mercantile Safe-Deposit and Trust Company, a cor-  
 poration, that the seal affixed to said instrument is the corporate seal  
 of said corporation, that said instrument was signed and sealed by  
 him on behalf of said corporation by authority of its Board of Di-  
 rectors, and he acknowledged that the execution and delivery of said  
 instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 5th day of  
~~May~~ MAY, 1970.

*Dorothy E. Scharf*  
 Notary Public,  
 City of Baltimore, Maryland

My Commission expires 7-1-70

(NOTARIAL SEAL)

DOROTHY E. SCHARF  
 NOTARY PUBLIC  
 My Commission Expires July 1, 1970

ditional Sale Agreement set forth, or (b) each Seller's obligations to indemnify the Buyer against and save and keep the Buyer harmless from loss and expense resulting from patent claims, all as set forth in Section 8 of the Conditional Sale Agreement, the said obligations to be and remain enforceable against and only against the Sellers, respectively, as provided in the Conditional Sale Agreement.

(4) Each Seller will indemnify the Agent against and save and keep it harmless from all expense, loss or damage incurred or sustained by the Agent by reason of any defense, set-off or counterclaim of the Buyer, based on any indebtedness or liability at any time owing to the Buyer by said Seller in any suit or action brought by the Agent under the Conditional Sale Agreement. Each Seller agrees to save, indemnify and keep harmless the Agent from and against any and all royalties, damages, claims, suits, judgments and costs that may arise in the use of any patented article on the cars at the time of delivery, except with regard to any appliances, devices or materials specified or required by the Buyer and not manufactured by such Seller.

(5) Each Seller covenants and agrees that it will construct the cars to be built by it in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyer free of all claims, liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; and that notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by such Seller.

(6) Each Seller covenants and agrees with the Agent that, upon the request of the Agent, such Seller will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Seller therein or in the cars therein described.

(7) The Agent covenants and agrees that upon each Closing Date (as defined in the Conditional Sale Agreement) it will make payment to such Seller of the Deferred Purchase Price of each car in the Group being settled for, determined as provided in Section 2 of the Conditional Sale Agreement, provided it shall have received the

following documents in such number of counterparts or copies as may be reasonably requested:

(a) A bill of sale from the Seller to the Agent, transferring to the Agent title to the car or cars so delivered, and warranting to the Agent and to the Buyer that at the time of delivery to the Buyer the Seller had legal title to such cars and good and lawful right to sell such cars and that title to such cars was then free of all claims, liens and encumbrances of any nature except only the rights of the Buyer under the Conditional Sale Agreement;

(b) A certificate of acceptance signed by an authorized representative of the Buyer stating that the car or cars covered by such certificate have been delivered to and accepted by him on behalf of the Buyer as conforming in all respects to the requirements and the provisions of the Conditional Sale Agreement;

(c) A duplicate of the Seller's invoice covering such car or cars so accepted, stating the Purchase Price (as then determined) and the Deferred Purchase Price of each of said cars and acknowledging receipt of payment of the excess of the Purchase Price over the Deferred Purchase Price;

(d) A certificate executed by the Buyer, dated as of the date of acceptance by the Buyer of such car or cars, stating that the amounts of the Deferred Purchase Price and the Purchase Price (as then determined) of each of said cars are the amounts shown on the invoice hereinabove in subparagraph (c) referred to, and that the excess of said Purchase Price over the Deferred Purchase Price has been paid;

(e) An Opinion of Counsel for the Buyer in form acceptable to the Agent and its counsel as specified in Section 9 of the Conditional Sale Agreement;

(f) An Opinion of Counsel for such Seller, dated as of such Closing Date, stating that (i) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment; (ii) title to the cars in the Group being settled for on such Closing Date is validly vested in the Agent and such cars, at the time of delivery thereof to the Buyer under the Conditional Sale Agreement, were

free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement; (iii) such Seller is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and (iv) the Conditional Sale Agreement and this Agreement and Assignment have been duly authorized, executed and delivered by such Seller and assuming valid authorization, execution and delivery by the other parties hereto and thereto, are valid instruments binding upon such Seller and enforceable against such Seller in accordance with their terms; and

(g) An Opinion, dated as of the Closing Date, of Messrs. Davis Polk & Wardwell, who are acting as special counsel for the Agent and for certain Investors named in the Finance Agreement, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms; (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument and enforceable in accordance with its terms; (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment; (iv) title to the cars, when each car was delivered and accepted by the Buyer, was validly vested in the Agent free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement; (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Agreement and Assignment or, if any approval is necessary it has been obtained; and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Agent in any state of the United States of America.

In giving the opinions specified in subsection (e), (f) and (g) above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with



its terms, by a general reference as to limitations as to the enforceability imposed by laws with respect to or affecting remedies and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

The obligation of the Agent to make payment for any Group of the cars is hereby expressly conditioned upon the prior receipt by the Agent, as provided in the Finance Agreement, of all the funds to be furnished to the Agent by the various parties to the Finance Agreement with respect thereto.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default under the Conditional Sale Agreement, shall have occurred and be continuing.

It is understood and agreed that the Agent shall not be required to make any payment in respect of any car excluded from the Conditional Sale Agreement pursuant to subsection (B) of Section 2 thereof. The Agent shall at the request of the Sellers or the Buyer execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude any such cars from the Conditional Sale Agreement and from this Agreement and Assignment.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

(8) It is mutually agreed that the Agent and any assignee of the Agent may assign, and/or sell interests in, its rights hereunder and under the Conditional Sale Agreement, as a whole or in part or in respect of all or any one or more of the cars covered thereby, including the right to receive any payments due or to become due to it from the Buyer under the Conditional Sale Agreement in respect of such cars. In the event of any such assignment or sale, any such subsequent or successive assignee or assignees or purchasers shall, to the extent of such assignment or sale, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

(9) Each Seller hereby:

(a) represents and warrants to the Agent, its successors and

or encumbrancer and all others having any interest therein or to cause any such cars to be released from such pledge or encumbrance or to recover possession of such cars within thirty (30) days after Vendors shall have demanded in writing such cancellation or release or the recovery of possession of such cars; or

(c) shall fail or refuse, for more than thirty (30) days after Vendors shall have demanded in writing the performance thereof, to comply with any other of the terms and covenants of this Agreement to be kept and performed by Vendee or to make provision satisfactory to Vendors for such compliance; or

(d) shall file, or the creditors of the Vendee shall file any petition for reorganization or debt adjustment affecting the obligations of such Vendee hereunder under Section 77 of the Bankruptcy Act or under any amendment or revision thereof or under any other provision of the Bankruptcy Act as now or hereafter existing or under any other statute, or shall make any voluntary assignment or transfer of such Vendee's interest in and under this Agreement, or any involuntary transfer of such interest shall be made by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise (unless such petition shall be dismissed or such assignment, transfer, decree or process shall within thirty (30) days from the filing or other effective date thereof be nullified, stayed or otherwise rendered ineffective, or unless any such receiver or trustee shall within thirty (30) days from the date of his appointment adopt this Agreement pursuant to due authority of the court appointing him);

then, in any such case (in this Agreement sometimes called "event of default"), Vendors at their option may by notice in writing delivered to Vendee, and upon compliance with any mandatory requirement of law applicable to the action to be taken, declare to be due and payable forthwith the entire unpaid balance of the Purchase Price of the cars; and thereupon the entire amount of such unpaid Purchase Price shall become and shall be due and payable immediately without further demand together with interest thereon to such date of default at the

rates set out in Section 2(A) of this Agreement, and thereafter interest shall be payable by Vendee upon any portion thereof overdue, during such time as it shall remain overdue, at the rate of eight percent (8%) per annum or at the prime rate plus  $\frac{1}{4}$  of 1% per annum, whichever is greater, with respect to the semi-annual installments of the Deferred Purchase Price serially numbered 1 through 15, and at the rate of ten and one-eighth percent ( $10\frac{1}{8}\%$ ) with respect to the semi-annual installment of the Deferred Purchase Price numbered 16 and the annual installments of the Deferred Purchase Price serially numbered 17 through 23. Vendors shall thereupon be entitled to recover judgment for the entire amount so payable by Vendee with interest thereon at said rates and to collect such judgment out of any property of Vendee wherever situated. Any and all money so collected by Vendors shall be applied by them as hereinafter provided.

Vendee covenants that, in case of the happening of any such event of default, Vendors or their agents, after making the declaration previously provided for in this Section, and upon such further notice as may be required for compliance with any mandatory requirement of law applicable to the action to be taken, may also take possession of all or any of the cars wherever they may be found, and for that purpose enter upon the railroads and premises operated by Vendee, and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made hereunder for the cars and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind, earned by the cars or any thereof, and may lease the cars or any thereof, or, with or without retaking possession thereof (but only after making the declaration provided for in this Section), may sell the same or any thereof as far as may be necessary to realize the balance remaining to be paid by Vendee under this Agreement, free from any and all claims of Vendee at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, after at least fifteen (15) days' prior written notice to the Vendee, and with or without any other notice or advertisement, for cash or upon credit, in their discretion, and may otherwise proceed to enforce their rights in the manner provided by this Agreement.

In case Vendors shall rightfully demand possession of the cars in pursuance of this Agreement and shall reasonably designate a point or points upon the railroads or premises operated by Vendee, for de-

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF MERCER } ss:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, D. H. Lewis, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Greenville Steel Car Company, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 4th day of ~~May~~ April, 1970.

*Leora Smith*  
Notary Public

Mercer County, Pennsylvania

My Commission expires

(NOTARIAL SEAL)

LEORA SMITH, Notary Public

GREENVILLE, PENNSYLVANIA

My Commission Expires Feb. 21, 1973

STATE OF MARYLAND, }  
 CITY OF BALTIMORE, } SS:

The undersigned, a Notary Public for the State and City afore-  
 said, certifies that, on the date hereinafter stated, personally appeared  
 before me in said State and City, C. M. Webb,  
 to me personally known, who thereupon produced before me the fore-  
 going instrument, and who, being by me duly sworn, says that he is  
**ASSISTANT** Vice-President of Mercantile Safe-Deposit and Trust Company, a cor-  
 poration, that the seal affixed to said instrument is the corporate seal  
 of said corporation, that said instrument was signed and sealed by  
 him on behalf of said corporation by authority of its Board of Di-  
 rectors, and he acknowledged that the execution and delivery of said  
 instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 5th day of  
~~May~~ MAY, 1970.

*Dorothy E. Scharf*  
 Notary Public,  
 City of Baltimore, Maryland

My Commission expires 7-1-70

(NOTARIAL SEAL)

DOROTHY E. SCHARF  
 NOTARY PUBLIC  
 My Commission Expires July 1, 1970

ditional Sale Agreement set forth, or (b) each Seller's obligations to indemnify the Buyer against and save and keep the Buyer harmless from loss and expense resulting from patent claims, all as set forth in Section 8 of the Conditional Sale Agreement, the said obligations to be and remain enforceable against and only against the Sellers, respectively, as provided in the Conditional Sale Agreement.

(4) Each Seller will indemnify the Agent against and save and keep it harmless from all expense, loss or damage incurred or sustained by the Agent by reason of any defense, set-off or counterclaim of the Buyer, based on any indebtedness or liability at any time owing to the Buyer by said Seller in any suit or action brought by the Agent under the Conditional Sale Agreement. Each Seller agrees to save, indemnify and keep harmless the Agent from and against any and all royalties, damages, claims, suits, judgments and costs that may arise in the use of any patented article on the cars at the time of delivery, except with regard to any appliances, devices or materials specified or required by the Buyer and not manufactured by such Seller.

(5) Each Seller covenants and agrees that it will construct the cars to be built by it in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyer free of all claims, liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; and that notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by such Seller.

(6) Each Seller covenants and agrees with the Agent that, upon the request of the Agent, such Seller will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Seller therein or in the cars therein described.

(7) The Agent covenants and agrees that upon each Closing Date (as defined in the Conditional Sale Agreement) it will make payment to such Seller of the Deferred Purchase Price of each car in the Group being settled for, determined as provided in Section 2 of the Conditional Sale Agreement, provided it shall have received the

following documents in such number of counterparts or copies as may be reasonably requested:

(a) A bill of sale from the Seller to the Agent, transferring to the Agent title to the car or cars so delivered, and warranting to the Agent and to the Buyer that at the time of delivery to the Buyer the Seller had legal title to such cars and good and lawful right to sell such cars and that title to such cars was then free of all claims, liens and encumbrances of any nature except only the rights of the Buyer under the Conditional Sale Agreement;

(b) A certificate of acceptance signed by an authorized representative of the Buyer stating that the car or cars covered by such certificate have been delivered to and accepted by him on behalf of the Buyer as conforming in all respects to the requirements and the provisions of the Conditional Sale Agreement;

(c) A duplicate of the Seller's invoice covering such car or cars so accepted, stating the Purchase Price (as then determined) and the Deferred Purchase Price of each of said cars and acknowledging receipt of payment of the excess of the Purchase Price over the Deferred Purchase Price;

(d) A certificate executed by the Buyer, dated as of the date of acceptance by the Buyer of such car or cars, stating that the amounts of the Deferred Purchase Price and the Purchase Price (as then determined) of each of said cars are the amounts shown on the invoice hereinabove in subparagraph (c) referred to, and that the excess of said Purchase Price over the Deferred Purchase Price has been paid;

(e) An Opinion of Counsel for the Buyer in form acceptable to the Agent and its counsel as specified in Section 9 of the Conditional Sale Agreement;

(f) An Opinion of Counsel for such Seller, dated as of such Closing Date, stating that (i) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment; (ii) title to the cars in the Group being settled for on such Closing Date is validly vested in the Agent and such cars, at the time of delivery thereof to the Buyer under the Conditional Sale Agreement, were

free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement; (iii) such Seller is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and (iv) the Conditional Sale Agreement and this Agreement and Assignment have been duly authorized, executed and delivered by such Seller and assuming valid authorization, execution and delivery by the other parties hereto and thereto, are valid instruments binding upon such Seller and enforceable against such Seller in accordance with their terms; and

(g) An Opinion, dated as of the Closing Date, of Messrs. Davis Polk & Wardwell, who are acting as special counsel for the Agent and for certain Investors named in the Finance Agreement, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms; (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument and enforceable in accordance with its terms; (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment; (iv) title to the cars, when each car was delivered and accepted by the Buyer, was validly vested in the Agent free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement; (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Agreement and Assignment or, if any approval is necessary it has been obtained; and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Agent in any state of the United States of America.

In giving the opinions specified in subsection (e), (f) and (g) above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with



its terms, by a general reference as to limitations as to the enforceability imposed by laws with respect to or affecting remedies and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

The obligation of the Agent to make payment for any Group of the cars is hereby expressly conditioned upon the prior receipt by the Agent, as provided in the Finance Agreement, of all the funds to be furnished to the Agent by the various parties to the Finance Agreement with respect thereto.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default under the Conditional Sale Agreement, shall have occurred and be continuing.

It is understood and agreed that the Agent shall not be required to make any payment in respect of any car excluded from the Conditional Sale Agreement pursuant to subsection (B) of Section 2 thereof. The Agent shall at the request of the Sellers or the Buyer execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude any such cars from the Conditional Sale Agreement and from this Agreement and Assignment.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

(8) It is mutually agreed that the Agent and any assignee of the Agent may assign, and/or sell interests in, its rights hereunder and under the Conditional Sale Agreement, as a whole or in part or in respect of all or any one or more of the cars covered thereby, including the right to receive any payments due or to become due to it from the Buyer under the Conditional Sale Agreement in respect of such cars. In the event of any such assignment or sale, any such subsequent or successive assignee or assignees or purchasers shall, to the extent of such assignment or sale, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

(9) Each Seller hereby:

(a) represents and warrants to the Agent, its successors and

assigns that the Conditional Sale Agreement was lawfully executed by it for a valid consideration, and that assuming valid authorization, execution and delivery by the other parties thereto, the Conditional Sale Agreement is a valid, existing Agreement binding upon such parties in accordance with its terms, and that there has been no amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to Agent or intended so to be.

(10) This Agreement and Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument. Agent agrees to deliver one of such counterparts, or a certified copy thereof, to the Buyer. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

(11) No delay in exercising, or failure to exercise or partial exercise of any of the rights of the Agent under this Agreement and Assignment shall operate as a waiver thereof. In no event shall any notice to or demand on the Sellers, or either of them, be deemed a waiver of any obligation of the Sellers to comply without notice or demand with all the terms, conditions and agreements herein contained, or a waiver of any right of the Agent to take further action as herein provided without notice or demand, nor in any event shall any waiver or consent on the part of the Agent be effective unless in writing, and then only with respect to the specific instance for which the same is given.

(12) Each reference herein to the Agent shall in every instance, except where the context otherwise requires, be deemed to include its successors and assigns, in whose favor the provisions hereof shall likewise inure; and all provisions hereof shall be binding upon the Sellers and their successors and assigns.

(13) The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; provided, however, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. This Agreement and Assignment, and all rights and obligations hereunder, is intended to create and to perpetuate and assign, and shall be treated as, a security interest in said cars for the indebtedness of the Buyer under the Conditional Sale Agreement and under this Agreement and Assignment as the term "security interest" is described under the Uniform Commercial Code heretofore adopted by the Commonwealth of Kentucky.

IN WITNESS WHEREOF, each Seller and the Agent have caused this instrument to be executed in their respective names by their respective officers thereunto duly authorized, and have caused their respective corporate seals to be affixed, duly attested, as of the day and year first above written.

PULLMAN INCORPORATED  
(Pullman-Standard division)

By

Vice-President

(CORPORATE SEAL)

ATTEST:

Assistant Secretary

GREENVILLE STEEL CAR COMPANY

By

Vice-President

(CORPORATE SEAL)

ATTEST:

Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY

By

ASSISTANT Vice-President

(CORPORATE SEAL)

ATTEST:

ASSISTANT Corporate Trust Officer

STATE OF ILLINOIS, }  
COUNTY OF COOK } ss:

The undersigned, a Notary Public for the State and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said State and County, Stanley Brown, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Pullman Incorporated (Pullman-Standard division), a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 15<sup>th</sup> day of <sup>may</sup> ~~April~~, 1970.

Jerome F. Roehl  
Notary Public  
Cook County, Illinois

My Commission expires Feb. 24, 1971

(NOTARIAL SEAL)

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF MERCER } ss:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, D. H. Lewis, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Greenville Steel Car Company, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 4th day of ~~May~~  
~~April~~, 1970.

*Leora Smith*  
Notary Public

Mercer County, Pennsylvania

My Commission expires

(NOTARIAL SEAL)

LEORA SMITH, Notary Public

GREENVILLE, PENNSYLVANIA

My Commission Expires Feb. 21, 1973

STATE OF MARYLAND, }  
 CITY OF BALTIMORE, } SS:

The undersigned, a Notary Public for the State and City afore-  
 said, certifies that, on the date hereinafter stated, personally appeared  
 before me in said State and City, C. M. Webb,  
 to me personally known, who thereupon produced before me the fore-  
 going instrument, and who, being by me duly sworn, says that he is  
**ASSISTANT** Vice-President of Mercantile Safe-Deposit and Trust Company, a cor-  
 poration, that the seal affixed to said instrument is the corporate seal  
 of said corporation, that said instrument was signed and sealed by  
 him on behalf of said corporation by authority of its Board of Di-  
 rectors, and he acknowledged that the execution and delivery of said  
 instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 5th day of  
~~May~~ MAY, 1970.

*Dorothy E. Scharf*  
 Notary Public,  
 City of Baltimore, Maryland

My Commission expires 7-1-70

(NOTARIAL SEAL)

DOROTHY E. SCHARF  
 NOTARY PUBLIC  
 My Commission Expires July 1, 1970

ditional Sale Agreement set forth, or (b) each Seller's obligations to indemnify the Buyer against and save and keep the Buyer harmless from loss and expense resulting from patent claims, all as set forth in Section 8 of the Conditional Sale Agreement, the said obligations to be and remain enforceable against and only against the Sellers, respectively, as provided in the Conditional Sale Agreement.

(4) Each Seller will indemnify the Agent against and save and keep it harmless from all expense, loss or damage incurred or sustained by the Agent by reason of any defense, set-off or counterclaim of the Buyer, based on any indebtedness or liability at any time owing to the Buyer by said Seller in any suit or action brought by the Agent under the Conditional Sale Agreement. Each Seller agrees to save, indemnify and keep harmless the Agent from and against any and all royalties, damages, claims, suits, judgments and costs that may arise in the use of any patented article on the cars at the time of delivery, except with regard to any appliances, devices or materials specified or required by the Buyer and not manufactured by such Seller.

(5) Each Seller covenants and agrees that it will construct the cars to be built by it in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyer free of all claims, liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; and that notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by such Seller.

(6) Each Seller covenants and agrees with the Agent that, upon the request of the Agent, such Seller will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Seller therein or in the cars therein described.

(7) The Agent covenants and agrees that upon each Closing Date (as defined in the Conditional Sale Agreement) it will make payment to such Seller of the Deferred Purchase Price of each car in the Group being settled for, determined as provided in Section 2 of the Conditional Sale Agreement, provided it shall have received the



following documents in such number of counterparts or copies as may be reasonably requested:

(a) A bill of sale from the Seller to the Agent, transferring to the Agent title to the car or cars so delivered, and warranting to the Agent and to the Buyer that at the time of delivery to the Buyer the Seller had legal title to such cars and good and lawful right to sell such cars and that title to such cars was then free of all claims, liens and encumbrances of any nature except only the rights of the Buyer under the Conditional Sale Agreement;

(b) A certificate of acceptance signed by an authorized representative of the Buyer stating that the car or cars covered by such certificate have been delivered to and accepted by him on behalf of the Buyer as conforming in all respects to the requirements and the provisions of the Conditional Sale Agreement;

(c) A duplicate of the Seller's invoice covering such car or cars so accepted, stating the Purchase Price (as then determined) and the Deferred Purchase Price of each of said cars and acknowledging receipt of payment of the excess of the Purchase Price over the Deferred Purchase Price;

(d) A certificate executed by the Buyer, dated as of the date of acceptance by the Buyer of such car or cars, stating that the amounts of the Deferred Purchase Price and the Purchase Price (as then determined) of each of said cars are the amounts shown on the invoice hereinabove in subparagraph (c) referred to, and that the excess of said Purchase Price over the Deferred Purchase Price has been paid;

(e) An Opinion of Counsel for the Buyer in form acceptable to the Agent and its counsel as specified in Section 9 of the Conditional Sale Agreement;

(f) An Opinion of Counsel for such Seller, dated as of such Closing Date, stating that (i) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment; (ii) title to the cars in the Group being settled for on such Closing Date is validly vested in the Agent and such cars, at the time of delivery thereof to the Buyer under the Conditional Sale Agreement, were

free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement; (iii) such Seller is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and (iv) the Conditional Sale Agreement and this Agreement and Assignment have been duly authorized, executed and delivered by such Seller and assuming valid authorization, execution and delivery by the other parties hereto and thereto, are valid instruments binding upon such Seller and enforceable against such Seller in accordance with their terms; and

(g) An Opinion, dated as of the Closing Date, of Messrs. Davis Polk & Wardwell, who are acting as special counsel for the Agent and for certain Investors named in the Finance Agreement, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms; (ii) this Agreement and Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument and enforceable in accordance with its terms; (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment; (iv) title to the cars, when each car was delivered and accepted by the Buyer, was validly vested in the Agent free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement; (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Agreement and Assignment or, if any approval is necessary it has been obtained; and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Agent in any state of the United States of America.

In giving the opinions specified in subsection (e), (f) and (g) above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with

its terms, by a general reference as to limitations as to the enforceability imposed by laws with respect to or affecting remedies and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

The obligation of the Agent to make payment for any Group of the cars is hereby expressly conditioned upon the prior receipt by the Agent, as provided in the Finance Agreement, of all the funds to be furnished to the Agent by the various parties to the Finance Agreement with respect thereto.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default under the Conditional Sale Agreement, shall have occurred and be continuing.

It is understood and agreed that the Agent shall not be required to make any payment in respect of any car excluded from the Conditional Sale Agreement pursuant to subsection (B) of Section 2 thereof. The Agent shall at the request of the Sellers or the Buyer execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude any such cars from the Conditional Sale Agreement and from this Agreement and Assignment.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

(8) It is mutually agreed that the Agent and any assignee of the Agent may assign, and/or sell interests in, its rights hereunder and under the Conditional Sale Agreement, as a whole or in part or in respect of all or any one or more of the cars covered thereby, including the right to receive any payments due or to become due to it from the Buyer under the Conditional Sale Agreement in respect of such cars. In the event of any such assignment or sale, any such subsequent or successive assignee or assignees or purchasers shall, to the extent of such assignment or sale, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

(9) Each Seller hereby:

(a) represents and warrants to the Agent, its successors and

assigns that the Conditional Sale Agreement was lawfully executed by it for a valid consideration, and that assuming valid authorization, execution and delivery by the other parties thereto, the Conditional Sale Agreement is a valid, existing Agreement binding upon such parties in accordance with its terms, and that there has been no amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to Agent or intended so to be.

(10) This Agreement and Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument. Agent agrees to deliver one of such counterparts, or a certified copy thereof, to the Buyer. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

(11) No delay in exercising, or failure to exercise or partial exercise of any of the rights of the Agent under this Agreement and Assignment shall operate as a waiver thereof. In no event shall any notice to or demand on the Sellers, or either of them, be deemed a waiver of any obligation of the Sellers to comply without notice or demand with all the terms, conditions and agreements herein contained, or a waiver of any right of the Agent to take further action as herein provided without notice or demand, nor in any event shall any waiver or consent on the part of the Agent be effective unless in writing, and then only with respect to the specific instance for which the same is given.

(12) Each reference herein to the Agent shall in every instance, except where the context otherwise requires, be deemed to include its successors and assigns, in whose favor the provisions hereof shall likewise inure; and all provisions hereof shall be binding upon the Sellers and their successors and assigns.

(13) The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; provided, however, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. This Agreement and Assignment, and all rights and obligations hereunder, is intended to create and to perpetuate and assign, and shall be treated as, a security interest in said cars for the indebtedness of the Buyer under the Conditional Sale Agreement and under this Agreement and Assignment as the term "security interest" is described under the Uniform Commercial Code heretofore adopted by the Commonwealth of Kentucky.

IN WITNESS WHEREOF, each Seller and the Agent have caused this instrument to be executed in their respective names by their respective officers thereunto duly authorized, and have caused their respective corporate seals to be affixed, duly attested, as of the day and year first above written.

PULLMAN INCORPORATED  
(Pullman-Standard division)

By

*Stanley J. Dorn*  
Vice-President

(CORPORATE SEAL)

ATTEST:

*Thomas M. Monahan*  
Assistant Secretary

GREENVILLE STEEL CAR COMPANY

By

*R. F. Lewis*  
Vice-President

(CORPORATE SEAL)

ATTEST:

*F. B. Brown*  
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY

By

*C. M. Welch*  
ASSISTANT Vice-President

(CORPORATE SEAL)

ATTEST:

*C. A. Dwyer*  
ASSISTANT Corporate Trust Officer

STATE OF ILLINOIS, }  
COUNTY OF COOK } ss:

The undersigned, a Notary Public for the State and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said State and County, Stanley Brown, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Pullman Incorporated (Pullman-Standard division), a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 15<sup>th</sup> day of <sup>may</sup> ~~April~~, 1970.

Jerome F. Roehl  
Notary Public  
Cook County, Illinois

My Commission expires Feb. 24, 1971

(NOTARIAL SEAL)

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF MERCER } ss:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, D. H. Lewis, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Greenville Steel Car Company, a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 4th day of ~~May~~  
~~April~~, 1970.

*Leora Smith*  
Notary Public

Mercer County, Pennsylvania

My Commission expires

(NOTARIAL SEAL)

LEORA SMITH, Notary Public

GREENVILLE, PENNSYLVANIA

My Commission Expires Feb. 21, 1973



STATE OF MARYLAND, }  
 CITY OF BALTIMORE, } SS:

The undersigned, a Notary Public for the State and City afore-  
 said, certifies that, on the date hereinafter stated, personally appeared  
 before me in said State and City, C. M. Webb,  
 to me personally known, who thereupon produced before me the fore-  
 going instrument, and who, being by me duly sworn, says that he is  
**ASSISTANT** Vice-President of Mercantile Safe-Deposit and Trust Company, a cor-  
 poration, that the seal affixed to said instrument is the corporate seal  
 of said corporation, that said instrument was signed and sealed by  
 him on behalf of said corporation by authority of its Board of Di-  
 rectors, and he acknowledged that the execution and delivery of said  
 instrument was the free act and deed of said corporation.

~~WITNESS~~ Witness my hand and notarial seal, this 5th day of  
~~May~~ MAY, 1970.

*Dorothy E. Scharf*  
 Notary Public,  
 City of Baltimore, Maryland

My Commission expires 7-1-70

(NOTARIAL SEAL)

DOROTHY E. SCHARF  
 NOTARY PUBLIC  
 My Commission Expires July 1, 1970

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of, the Assignment made by the foregoing Agreement and Assignment is hereby acknowledged as

of May 12, 1970.

LOUISVILLE AND NASHVILLE RAILROAD  
COMPANY

By

*R. E. Bisha*  
Vice President